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CASE NO.: 5:19-cv-00995-CLS

FIRST AMENDED COMPLAINT

PARTIES

JURISDICTION AND VENUE

3. Paragraphs 1 through 2 are incorporated herein as if set out in full.

4. Given the amount in controversy and the nature of claims plead *infra*, this Court has subject matter jurisdiction over this matter.

5. Plaintiff brings its complaint under federal diversity jurisdiction, 28 U.S.C. § 1332, as the parties are completely diverse in citizenship and the amount in controversy exceeds \$75,000.

FACTS

6. Paragraphs 1 through 5 are incorporated herein as if set out in full.

7. Plaintiff is the owner and landlord of a piece of commercial real estate located at 620 Discovery Drive Huntsville, Alabama (“Property Location”). This commercial real estate building consists of office space. The Property Location is managed by Colliers/International on behalf of the owner.

8. On or about November 23, 2011 a lease agreement was entered into by BR Cummings Research Park Portfolio III, TIC-1, LLC as (“the Landlord”) and MI-Helicopter Solutions, Inc. as the tenant to rent office space located at Suite 140 of the Property Location.

9. On or about September 26, 2013, the lease was amended (First Amendment) to change the office space from Suite 140 to Suite 110 and MI-Helicopter Solutions, Inc. was now known as AAL USA, Inc.

10. On or about December 20, 2013, the lease was amended (Second Amendment) to expand the office space to include additional space located adjacent

to Suite 110.

11. On or about July 21, 2015, the lease was amended (Third Amendment) to change the office space from its current location of Suite 110 to Suite 200.

12. On or about April 5, 2016, the lease was amended (Fourth Amendment) and included the following:

- The Term which was scheduled to expire on November 30, 2021 was to remain unaltered
- Expanded leased area to include an additional 3,286 square feet located on the first (1st) floor of the Building at Suite 140
- Effective July 1, 2016, or upon completion of improvements to include an additional 20,553 square feet located on the third (3rd) floor of the Building at Suite 300 for a total space of approximately 40,017 square feet of space.
- The monthly rent to was increase from Twenty-Three Thousand Nine Hundred Twenty-Nine and 96/100 Dollars (\$23,929.96) to Forty Three Thousand Nine Hundred Ninety One and 15/100 Dollars (\$43,991.15) once all the expansions were complete around August 1, 2016
- The monthly rent was then set to increase, incrementally, as follows:
 - October 1, 2016 \$59,191.81
 - December 1, 2016 \$60,894.96
 - December 1, 2017 \$61,648.46
 - December 1, 2018 \$62,917.03
 - December 1, 2019 \$64,212.69
 - December 1, 2020 \$65,518.58

13. On or about September 29, 2016, Defendant Black Hall Aerospace, Inc. entered into an Asset Purchase Agreement with AAL USA, Inc. which included an Assumption of the Lease agreement between AAL USA, Inc. and the Landlord.

14. On or about December 22, 2017 BR Cummings Research Park

Portfolio III, TIC-1, LLC sold the Property Location to CRP III Property Owner, LLC. CRP III Property Owner, LLC is the Plaintiff and current Landlord.

15. On or about September 21, 2108, Defendant entered into a sublease agreement with Adams Communication & Engineering Technology (ACET) for a portion of the office space it was renting from Plaintiff for \$5,300 a month ending on September 1, 2019. This sublease included a clause that made ACET subject to the lease between Defendant and Plaintiff as the Landlord.

16. On or about April 26, 2018, Defendant Black Hall entered into a sublease agreement with Dynetics, Inc. for a portion of the office space it was renting from Plaintiff ending on June 30, 2020. On or about March 20, 2019, a First Amendment was entered into to increase the space and for the monthly rent to be \$49,739.89 until June 30, 2020 and then increase to \$52,035.58. This sublease included a clause that made Dynetics subject to the lease between Defendant and Plaintiff.

17. Subject to the two subleases as referenced above, Defendant was to keep paying the rent to Plaintiff as agreed in the Fourth Amendment until November 30, 2021.

18. On or about April 2019, Defendant failed to pay Plaintiff rent, and has not paid any since this date.

19. Plaintiff has tried to resolve this matter and still has not received any

payments from Defendant as of today's date.

20. Plaintiff has learned that Defendant was paid April and May 2019 rent by its sublessors but has not turned the funds over to Plaintiff.

21. Plaintiff started receiving payments directly from the sublessors in June 2019. However, this amount is less than the agreed rent with Defendant per the Fourth Amendment to the Lease.

22. At the time Defendant breached its obligations, the monthly rent amount was \$62,917.03 with a late fee of 18% interest to be charged per annum. This amount continues to accrue daily, plus costs.

23. Thus far, Defendant has failed to pay the rent it owes on the above-referenced property for the months of April and June and owes the difference in rent payment received from the sublessors for the term of the lease.

24. Plaintiff seeks recovery for the overdue rent, plus late fees and interest, plus attorney fees and other costs.

CAUSES OF ACTION

Count I – Breach of Contract

25. Paragraphs 1 through 24 are incorporated herein, as if set out in full.

26. Defendant, through conduct acknowledging mutual assent, offer, and acceptance, made a valid and binding contract, supported by good and valuable consideration and fully enforceable at law, when it entered into the lease with

Plaintiff.

27. All conditions precedent to the Defendant's performance of its obligations to date under the lease have occurred or have been waived.

28. Defendant is obligated to make payments of sums owed under the lease but has failed and refused to do so upon demand.

29. The full amount owed on the lease, at the time of the filing of this Complaint, and inclusive of fees and costs is, to date, in excess of \$147,000.

30. Plaintiff has incurred and will continue to incur attorneys' fees and costs in the prosecution of this civil action.

WHEREFORE, Plaintiff demands judgment in its favor against Defendant in the amount of all sums due under the lease as they shall be proved to exist as of the date of entry of judgment, interest, pre-judgment interest, penalties, late charges and all other amounts of any kind owed under the lease, plus reasonable attorneys' fees and costs incurred by Plaintiff in the prosecution of this action, plus all other costs and fees allowed by law.

Count II – Breach of Lease

31. Paragraphs 1 through 24 are incorporated herein, as if set out in full.

32. Plaintiff is the owner of that certain commercial real estate known as the Property Location.

33. Defendant, doing business as Black Hall Aerospace was a tenant in at

the Property Location occupying space as defined in the Fourth Amended Lease.

34. Plaintiff and Defendant are subject to the lease as entered into on November 23, 2011 by an Assumption of the Lease entered into on May 24, 2018. A true and correct copy of the Assumption of Lease is attached hereto as “Exhibit A.”

35. Defendant sublet a portion of the rented space to Adams Communication & Engineering Technology (ACET) and the remaining space to Dynetics, Inc.

36. Defendant defaulted under the Lease by failing to pay rent collected from the sublessors and other charges when the same became due.

37. Plaintiff, pursuant to Landlord’s rights under the Sublease Agreements, collects rent payments directly from the sublessors, but in an amount less than the agreed to per the Lease entered into with Defendant.

WHEREFORE, PREMISES CONSIDERED, Plaintiff demands judgment against the Defendant in the sum of all sums due under the lease as they shall be proved to exist as of the date of entry of judgment, interest, pre-judgment interest, penalties, late charges and all other amounts of any kind owed under the lease, plus reasonable attorneys’ fees and costs incurred by Plaintiff in the prosecution of this action, plus all other costs and fees allowed by law.

Count III – Unjust Enrichment

38. Paragraphs 1 through 24 are incorporated herein, as if set out in full.

39. Defendant knowingly accepted and retained the rent payments from their sublessors as described above.

40. Defendant was unjustly enriched, and it would be inequitable to allow Defendant to retain these benefits.

41. Plaintiff requests that Defendant:

- a) perform an equitable accounting to determine Plaintiff's fair share of any monies and interest owed to it;
- b) create a constructive trust, the *res* of which to be comprised of any and all amounts unjustly retained; and
- c) disgorge the *res* to Plaintiff via resulting restitution.

Respectfully submitted this the 26th day of June, 2019.

s/ Eric J. Artrip

Eric J. Artrip (ASB-9673-I68E)

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DEFENDANT TO BE SERVED BY CERTIFIED MAIL

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